



TOBACCO LAWS

Affecting California

January 2006 Supplement

For use with the 2004 edition of TALC's booklet
Tobacco Laws Affecting California

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TABLE OF CONTENTS

Introduction	4
Changes to Existing Entries	5
Entry 3 (State, County, and City Buildings)	5
Entry 13 (Selling/Giving Tobacco Products to Minors)	5
Entry 18 (Sign-Posting Requirement for Retailers)	5
Entry 19 (Self-Service Sales)	6
Entry 26 (Purchase/Possession of Tobacco Products by Minors) ..	6
Entry 89 (Unfair Competition Law)	7
New Entries	8
Tobacco Products in Prisons	8
Tobacco Products in Youth Authority Facilities	8
Fire Safe Cigarettes	9
Technical Additions to the Tobacco Tax Law and Licensing and Reporting Topic Areas	10



INTRODUCTION

In 2004 and 2005, California adopted a number of laws that affect how tobacco is used or sold in the state. This supplement summarizes the tobacco-related laws that were passed in California after the release of the 2004 edition of TALC's booklet *Tobacco Laws Affecting California*.

The supplement should be used hand in hand with the 2004 edition of *Tobacco Laws Affecting California*. It is organized so that readers can track which entries in the booklet need to be updated and see where new entries should be added.

If you have questions about the laws summarized in this update or would like a copy of the 2004 edition of *Tobacco Laws Affecting California*, please contact us at (510) 444-8252 or talc@phi.org, or visit our website at <http://talc.phi.org>. To access the full text of any of the California laws described in this update, please visit www.leginfo.ca.gov/calaw.html.

This update is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues, and attorneys should perform an independent evaluation of the issues raised in these materials.



CHANGES TO EXISTING ENTRIES

Change to Entry 3 (STATE, COUNTY, AND CITY BUILDINGS)

Entry 3 summarizes the law prohibiting smoking inside state, county, and city buildings and lists several exceptions to the law, including state prison yards. A law passed in 2004 declares that **state prison yards are no longer an exception**. Therefore, smoking is no longer allowed inside state prison yards.

Bill Number: AB 384 – Leslie (2004 session)

Law Citation: California Penal Code Section 5030.1

Effective Date: July 1, 2005

Change to Entry 13 (SELLING/GIVING TOBACCO PRODUCTS TO MINORS)

Entry 13 summarizes the law prohibiting anyone from selling or giving tobacco products and paraphernalia to minors. This entry lists one exception to the law pertaining to minors in correctional facilities. As of July 1, 2005, this exception no longer applies. The Director of Corrections is **no longer able to sell or supply tobacco products to any minor who is confined in a correctional facility**.

Bill Number: AB 384 – Leslie (2004 session)

Law Citation: California Welfare and Institutions Code Section 1712.5

Effective Date: July 1, 2005

Change to Entry 18 (SIGN-POSTING REQUIREMENT FOR RETAILERS)

Entry 18 summarizes the law requiring tobacco retailers to post a specific sign (commonly known as the “STAKE Act” sign) saying that tobacco products may not be sold to minors. A law passed in 2004 **increases the monetary penalties for violations of the sign-posting requirement**: Retailers who fail to post the sign are subject to a fine of \$50 for the first offense, \$100 for the second offense, \$250 for the third offense, and \$500 for the fourth offense and each subsequent violation, or by imprisonment for not more than 30 days.

Bill Number: AB 3092 – Horton (2004 session)

Law Citation: California Penal Code Section 308(c)

Effective Date: September 27, 2004

Change to Entry 19 (SELF-SERVICE SALES)

Entry 19 summarizes the law prohibiting the self-service display of cigarettes. A law passed in 2004 **expands the self-service display ban to include any tobacco product** (including cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, and bidis) **or tobacco paraphernalia** (including cigarette papers, pipes, and cigarette rolling machines).

This law makes an exception for the display in a “tobacco store” of pipe tobacco, snuff, chewing tobacco, dipping tobacco, or cigars that are generally not sold or offered for sale in a sealed package of the manufacturer or importer containing less than six cigars. A tobacco store is defined as a business that (1) primarily sells tobacco products; (2) generates more than 60 percent of its gross revenue annually from the sale of tobacco products and paraphernalia; (3) prohibits minors unless accompanied by a parent or guardian; and (4) does not sell alcohol or food for consumption on the premises.

Bill Number: 1173 – Ortiz (2004 session)

Law Citation: California Business and Professions Code Section 22962

Effective Date: January 1, 2005

Change to Entry 26 (PURCHASE/POSSESSION OF TOBACCO PRODUCTS BY MINORS)

Entry 26 summarizes the law prohibiting minors from purchasing, receiving, or possessing tobacco products and paraphernalia. This entry lists one exception to the law pertaining to minors in correctional facilities. Under a law passed in 2004, this exception no longer applies. The Director of Corrections is **no longer able to sell or supply tobacco products to any minor who is confined in a correctional facility.**

Bill Number: AB 384 – Leslie (2004 session)

Law Citation: California Welfare and Institutions Code Section 1712.5

Effective Date: July 1, 2005

**Change to Entry 89
(UNFAIR COMPETITION LAW)**

Entry 89 describes how California's unfair competition law can be used as a mechanism to enforce any tobacco control law that is being violated. In 2004, California voters passed a proposition that **takes away the ability of private individuals to use the state's unfair competition law** to enforce tobacco control laws unless those individuals have been directly harmed by a violation. Government attorneys, however, still may use the unfair competition law to enforce any tobacco control law.

Proposition Number: 64 (November 2, 2004, election)

Law Citation: California Business and Professions Code Section 17203

Effective Date: November 3, 2004



NEW ENTRIES

The following three entries should be added to the **Tobacco Sales** section of the booklet.

TOBACCO PRODUCTS IN PRISONS

California Penal Code Section 5030.1

California Code of Regulations, Title 15, Sections 3006, 3187-3189

SCOPE: The possession or use of tobacco products by inmates under the jurisdiction of the Department of Corrections is prohibited. The use of tobacco products by anyone on the grounds of any institution or facility under the jurisdiction of the Department of Corrections is prohibited.

EXCEPTION: Inmates may use tobacco products in departmentally approved religious ceremonies. Tobacco products may be used in residential staff housing where inmates are not present.

ENFORCEMENT: The Director of Corrections shall adopt regulations to implement this prohibition.

PENALTY: Possession of tobacco products by inmates may result in disciplinary action and the confiscation of the tobacco products.

Bill Number: AB 384 – Leslie (2004 session)

Law Citation: California Penal Code Section 5030.1

Effective Date: July 1, 2005

TOBACCO PRODUCTS IN YOUTH AUTHORITY FACILITIES

California Welfare and Institutions Code Section 1712.5

SCOPE: The possession or use of tobacco products by wards and inmates in all institutions and camps under the jurisdiction of the Department of the Youth Authority is prohibited. The use of tobacco products by anyone on the grounds of any institution or facility under the jurisdiction of the Department of the Youth Authority is prohibited.

EXCEPTION: Inmates and wards may use tobacco products in departmentally approved religious ceremonies. Tobacco products may be used in residential staff housing where inmates or wards are not present.



ENFORCEMENT: The Director of the Youth Authority shall adopt regulations to implement this prohibition.

PENALTY: Not specified.

Bill Number: AB 384 – Leslie (2004 session)

Law Citation: California Welfare and Institutions Code Section 1712.5

Effective Date: July 1, 2005

FIRE SAFE CIGARETTES

California Health and Safety Code Sections 14950-14960

SCOPE: As of January 1, 2007, it will be illegal to sell, offer, or possess cigarettes for sale unless they meet fire safety standards modeled on standards currently in place in New York. Specifically, manufacturers must certify to the State Fire Marshal that their cigarettes have been tested in accordance with standards established by the American Society of Testing and Materials, and that no more than 25% of the cigarettes tested in a trial exhibit full-length burns. Cigarettes in compliance with this law shall be marked by the manufacturer on the packaging and case.

EXCEPTION: These requirements will no longer apply if federal fire safety standards that preempt these provisions are enacted. Distributors, wholesalers, or retailers may sell their existing inventory of cigarettes after January 1, 2007, if certain conditions are met.

ENFORCEMENT: The Attorney General may bring an action to enforce the law.

PENALTY: Manufacturers or others who knowingly sell or offer cigarettes in violation of these provisions other than through retail sale are subject to a civil penalty of up to \$10,000 for each sale. Retailers, distributors and wholesalers who knowingly sell cigarettes in violation of these provisions are subject to a civil penalty of up to \$500 for each sale of up to 50 packages of cigarettes and a civil penalty of up to \$1,000 for each sale of more than 50 packages of cigarettes. Cigarettes that are sold in violation of these provisions are subject to seizure by the Board of Equalization or a law enforcement agency.

Bill Number: AB 178 - Koretz (2005 session)

Law Citation: California Health and Safety Code Sections 14950-14960

Effective Date: January 1, 2007



TECHNICAL ADDITIONS TO THE TOBACCO TAX LAW AND LICENSING AND REPORTING TOPIC AREAS

Four bills made technical changes to the Cigarette and Tobacco Products Tax Law (entries 50-60) and the Tobacco Products Licensing Act of 2003 (entries 61-82). **None of these changes substantively affects the entries in the 2004 edition of the TALC booklet.**

Note that the four bills have no impact on the ability of local jurisdictions to pass their own tobacco retailer licensing ordinances (see entry 64).

In brief, the technical changes are as follows:

- **Invoice Information:** Each distributor and wholesaler shall include specified information on each invoice for the sale of cigarettes or tobacco products, including the date the tobacco products are sold. This law further requires that a distributor who is also a retailer or a manufacturer include one of the following on each invoice: (1) a statement that “all California cigarette and tobacco product taxes are included in the total amount of this invoice” or (2) the amount of excise taxes due to the Board of Equalization.

Bill Number: AB 892 -- Cogdill (2005 session)

Law Citation: California Business and Professions Code Section 22978.4

Effective Date: January 1, 2006

- **Public Hearings:** The Board of Equalization shall conduct at least two hearings per year where industry representatives and individual taxpayers are allowed to present proposals on changes to the Cigarette and Tobacco Products Tax Law that may further enhance voluntary compliance and improve relations between taxpayers and government.
- **BOE Posting of Revenues:** Every calendar quarter, the Board of Equalization shall post on its website the amount of cigarette and tobacco product revenues collected and disbursed in the previous quarter to the General Fund, the Breast Cancer Fund, the Cigarette and Tobacco Products Surtax Fund, and the California Children and Families Trust Fund Account.

Bill Number: AB 2030 – Cogdill (2004 session)

Law Citations: California Business and Professions Code Section 22978.4

Effective Date: January 1, 2005



- **Applicability of Law:** No one who is constitutionally or legally exempt from regulation shall be subject to the Cigarette and Tobacco Products Licensing Act of 2003.
- **Tax Stamp Changes:** Current law requires the Board of Equalization to replace old tax stamps and meter impressions with those that can be read by a scanner or similar device (see entry 55). This bill states the intent of the legislature that the Board of Equalization has the authority to implement mandated changes to stamps and meter impressions in a manner that does not affect commerce within California.

Bill Number: AB 3092 – Horton (2004 session)

Law Citations: California Business and Professions Code Section 22971.4

Effective Date: September 27, 2004

- **Small Cigars:** Cigars weighing three pounds or less per 1,000 are excluded from ingredient-reporting requirements for manufacturers and importers.
- **Posting Suspensions and Revocations:** The Board of Equalization shall post on its website the names of wholesalers or distributors whose licenses have been suspended or revoked.
- **Possession of Licenses:** A license issued to a manufacturer or importer may not be transferred or assigned, and must be surrendered if the manufacturer or importer is not doing business in the manner specified in the license or is notified that the license is suspended or revoked.
- **Notice of Seizure and Forfeiture:** The Board of Equalization is required to give a notice of seizure and forfeiture by personal service or certified mail and, if the amount of cigarettes seized is 61 cartons of 200 cigarettes or more, by posting the information on its website for six months.

Bill Number: AB 2491 – Horton (2004 session)

Law Citations:

California Business and Professions Code Section 22978.8

California Business and Professions Code Sections 22979(c),(d),(e)

California Revenue and Taxation Code Section 30437

Effective Date: June 30, 2004



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